

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Compliant No. R4-2004-0066
)	for
Shea Homes L.P.)	Administrative Civil Liability
30699 Russell Ranch Rd., Suite 290)	
Westlake Village, CA 91362)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Shea Homes L.P. (hereafter the Permittee) is alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ [NPDES Permit No. CAS000002] for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under section 13385 of the California Water Code.
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on the Permittee. The Permittee will be notified at least ten days in advance of the date, time and place of the Hearing. The Permittee or Permittee's representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, modify or reject the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of a greater judicial civil liability.
4. In the event that the Permittee fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer the matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS:

5. The Permittee's 11-acre construction site in Calabasas, California, located on Agoura Road / Las Virgenes Road, and identified by WDID number 419C301368, is subject to the requirements of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order NO. 99-08-DWQ, NPDES No. CAS000002 (General Permit). The General Permit requires the Permittee to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for each construction site (General Permit

SECTION A). The General Permit also requires that the SWPPP remain on site during working hours while the site is under construction (General Permit SECTION A.3), and that the SWPPP must be provided to the Regional Board upon request (General Permit SECTION A.15).

6. The Permittee is in violation of the Permit due to the following: failure to develop and implement a complete SWPPP; and failure to implement effective best management practices (BMPs) contrary to statements in the SWPPP.
 - a) On March 8, 2004, Regional Board staff (Enrique Loera) inspected the site. During the inspection, staff observed:
 - i. § A-(SWPPP): The Permittee failed to sign and certify the SWPPP; in addition, the SWPPP was missing a construction activity schedule, responsible parties for long-term maintenance of post-construction BMPs, a maintenance schedule for BMPs, annual certification, sampling and analysis procedures, and SWPPP amendments for new ownership and other amendments; (on May 19, 2004, a completed SWPPP was received).
 - ii. § A.6 & A.7-(Erosion Control and Stabilization): The Permittee failed to implement effective erosion control and stabilization measures specified in the SWPPP, as evidenced by severe erosion along some slopes.
 - iii. § A.8-(Sediment Control): The Permittee failed to implement effective sediment control BMPs specified in the SWPPP, as evidenced by a massive discharge of sediment and sediment-laden water to the south culvert adjacent to Las Virgenes Rd., leading directly to Las Virgenes Creek.
 - iv. § A.5b.(4) & (5)-(On-site Storage and Disposal): The Permittee failed to implement methods specified in the SWPPP for on-site storage and disposal of construction material and construction waste handling, as evidenced by exposed rusting scrap metal and construction debris dumped near a detention pond.
 - b) On March 18, 2004, the Regional Board issued a Notice of Violation (NOV) to the Permittee for an incomplete SWPPP and failure to implement effective erosion and sediment control BMPs described in the SWPPP. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that revisions to the SWPPP be submitted to the Regional Board by April 8, 2004. The Regional Board did receive a response on April 8, 2004; however, SWPPP revisions were not submitted. As stated in 6(i) above, on May 19, 2004, a completed SWPPP was received, six weeks after the due date.

- c) The Regional Board did not receive notification from Shea Homes L.P. within 30-calendar days or by April 4, 2004, of BMP failures and massive sediment discharge to Las Virgenes Creek tributary. This is in violation of SECTION B.5 of the General Permit.
- d) On April 13, 2004, Regional Board staff performed a follow-up inspection and observed:
 - i. § A-(SWPPP): The Permittee failed to provide a construction activity schedule, a maintenance schedule for BMPs, sampling and analysis procedures, and SWPPP amendments for new ownership and other amendments;
 - ii. § A.5-(On-site Storage and Disposal): The Permittee failed to implement methods specified in the SWPPP for on-site storage and disposal of construction material and construction waste handling, as evidenced by exposed rusting scrap metal and construction debris dumped near a detention pond;
- 7. Section 13385 of the California Water Code (CWC) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.
- 8. Based on the site inspections, and a conversation with Shea Homes L.P representative Dale Blanchard on April 20, 2004, the Permittee has been in violation of SECTION A.1 of the General Permit for failure to develop a complete SWPPP for the site from at least August 1, 2003 through May 19, 2004 and is civilly liable for a total of 293 days of violation. Based on inspections, information from Heal the Bay and information from the city of Calabasas, the Permittee was in violation of SECTION A.6,7, and 8 of the General Permit for failure to implement, maintain and improve BMPs on site (resulting in a massive discharge of sediment to a culvert leading to Las Virgenes Creek) from March 4, 2004 through April 8, 2004, and is civilly liable for a total 4 days of violation. Also, the Permittee was in violation of SECTION A.5 of the General Permit for failure to implement effective on-site storage and disposal methods of construction waste from March 8, 2004 through April 13, 2004, and is civilly liable for a total of 36 days of violation. These constitute violations of the General Permit, the Federal Clean Water Act, and the California Water Code. The total maximum liability that may be assessed for these violations is \$2,970,000 as follows:

MAXIMUM CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>For failing to comply with Order No. 99-08-DWQ by not developing and retaining a completed SWPPP.(SECTION A)</i>	Water Code section 13385 (c)(1): (293 days) X \$10,000/day	\$2,930,000
<i>For failing to comply with Order No. 99-08-DWQ by not Implementing and maintaining effective on-site storage and disposal methods of construction waste. (SECTION A.5)</i>	Water Code section 13385 (c)(1): (36 days) X \$10,000/day	\$360,000
<i>For failing to comply with Order No. 99-08-DWQ by not implementing and maintaining effective erosion, sediment and stabilization BMPs resulting in a massive discharge of sediment. (SECTIONS A.6- A.8)</i>	Water Code section 13385 (c)(1): (4 days) X \$10,000/day	\$40,000
POTENTIAL MAXIMUM ACL		\$3,330,000

9. In determining any liability to be imposed, CWC section 13385 (e) requires the Regional Board to consider the following factors:
 - a. Nature, circumstances, extent, and gravity of the violations: The Permittee operated at the site without a completed SWPPP for at least 257 days. A SWPPP mandates the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. Therefore, no reduction in the civil liability is warranted.
 - b. Susceptibility of the discharge to cleanup or abatement: The discharge of construction pollutants (such as sediment) is not easily cleaned-up once it has been released into the Flood Control Channel. Therefore, a reduction from the maximum civil liability is not warranted.
 - c. Degree of toxicity of the discharge: The discharge of construction pollutants violated water quality objectives in the Basin Plan. Sediment and sediment-laden water was discharged to a Las Virgenes Creek tributary. Section 303(d) of the Federal Clean Water Act requires states to identify waterbodies that do not meet water quality objectives and are not supporting their beneficial uses. Each state must submit an

updated list, called the 303(d) list, to the U.S. EPA every two years. In addition to identifying the waterbodies that are not supporting beneficial uses, the list also identifies the pollutant causing impairment, and establishes a schedule for developing a control plan to address the impairment. Las Virgenes Creek is a 303(d) listed waterbody whose beneficial uses are impaired by sediment. Therefore, a reduction from the maximum civil liability may not be warranted.

- d. The ability to pay: The Permittee has not provided the Regional Board any information to determine its ability to pay the maximum civil liability.
- e. Effect on the Permittee's ability to continue its business: Regional Board staff have no information to determine the impact of the proposed penalty to continue its business on the Permittee's ability.
- f. Voluntary cleanup efforts undertaken: When the BMPs installed by the Permittee failed to contain sediment laden water runoff, the Permittee did not take any voluntary efforts to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.
- g. Prior history of violations: On March 1, 2004, an inspector from the city of Calabasas noted that BMPs needed maintenance and that there was sediment deposit on the road. City of Calabasas staff requested that Shea Homes L.P. representative (John Giles) clean-up the sediment deposited on the road and maintain the BMPs on-site. Clean up and BMP maintenance did not take place, as evidenced by gullies on the slopes and a massive discharge of sediment to a Las Virgenes Creek tributary. This showed the Permittee did not upgrade the BMPs at the site. Therefore, a reduction in the maximum civil liability may not be warranted.
- h. Degree of culpability: The Permittee violated the terms of the General Permit by failing to develop a completed SWPPP and implement effective BMPs, which led to a discharge of sediment to waters of the United States during the rainy season. However, the Permittee partially improved erosion in response to the NOV. Therefore, a reduction from the maximum civil liability may be warranted.
- i. Economic benefit or savings: By not implementing and maintaining effective BMPs on at least 50% of its 11 acres of the site, the Permittee realized an economic savings of at least \$3,300, which breaks down:
 - i. 50% of 11 acres = 5.5 acres;
 - ii. 5.5 acres x \$600 per acre for implementation of BMPs = \$3,300;
 - iii. \$3,300 is the amount that the Permittee saved by not maintaining and implementing effective BMPs throughout its construction site since construction began.

- j. Other matters justice may require: Staff time to prepare this Complaint, is estimated to be \$4,200 (60 hours at \$70 per hour).

RECOMMENDED CIVIL LIABILITY

10. After consideration of these factors, the Regional Board Executive Officer (Executive Officer) proposes civil liability be imposed in the amount of \$34,000, which includes recovering of the Regional Board's staff costs, as outlined below:

PROPOSED CIVIL LIABILITY

Penalty Category	Calculation	Total
Avoided Cost: Lack of a complete SWPPP.	CWC Section 13385 \$1,500 for violations of SECTION A of the General Permit for not having a complete and updated SWPPP.	\$1,500.00
Avoided cost: Cost to implement effective erosion, sediment, and stabilization control BMPs.	\$3,300 in avoided cost, from not maintaining and implementing effective erosion sediment, and stabilization control BMPs as required by the General Permit.(SECTIONS A.6- A.8) 5.5 acres X \$600.	\$3,300.00
Penalty	CWC Section 13385 \$25,000 for violations of SECTION A.5,6,7 and 8 of the General Permit for two days of 5 violations [Inspections on March 8 (4 violations), and April 13 (1 violations)], \$5,000 per violation (5 violations).	\$25,000.00
Staff Costs	60 hours at \$70 per hour	\$4,200.00
	Total	\$34,000.00

11. This matter will be heard before the Regional Board or a Regional Board Hearing Panel pursuant to Water Code sections 13228.14 and 13323 unless the Permittee waives the hearing and pays the penalty of \$34,000 in full by July 17, 2004. The Permittee will be notified of the date, time, and location of the Hearing.
12. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional civil liability for violations of the requirements of the General Permit.
13. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
14. The Permittee may waive the right to a hearing. If the Permittee chooses to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 17, 2004. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$34,000 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver or;
 - b. The Permittee may propose to pay up to \$25,500 of the civil liability by:
 - i contributing to a SEP on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html, or
 - ii carrying out the Permittee's own independent SEP.

In the event that the Permittee proposes to invest in a SEP, a check in the amount of \$8,500 (payable to the State Water Resources Control Board Cleanup and Abatement Account) together with the Permittee's written statement confirming that the Permittee contributed to a SEP on the SEP List or proposes to carry out an independent SEP will be submitted along with the executed waiver and received by the Regional Board by the close of business on July 17, 2004.

If the Permittee elects to contribute to a SEP on the SEP List, the Permittee shall pay \$25,500 to the chosen SEP by the close of business on July 17, 2004, and notify the Regional Board of the date, amount and method of payment by the close of business on July 17, 2004.

If the Permittee proposes to carry out an independent SEP, a detailed description of the SEP shall be received by the Regional Board by the close of business on July 11, 2004. A proposal for an independent SEP will be subject to public notice and approval of the Regional Board. Should the Regional Board not approve the Permittee's proposal for an independent SEP, or should the Permittee later fail or elect not to implement the proposed independent SEP, the remainder of the civil liability will be due and payable within 30 days of such an event.

15. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested person will be given 30 days to comment on any proposed settlement of this Complaint.

Dennis A. Dickerson
Executive Officer

Date_____

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Shea Homes, L.P. to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0066(Complaint) issued by the Regional Board Executive Officer. Shea Homes L.P., understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Shea Homes L.P., elects to pay the civil liability in the following manner [check the relevant boxes]:

- o Enclosed herewith in full payment of the civil liability is a \$34,000 check payable to “State Water Resources Control Board Cleanup and Abatement Account.”

Or

- o Enclosed herewith are a \$8,500 check payable to “State Water Resources Control Board Cleanup and Abatement Account” and one of the following items:
- o Proof of payment of at least \$ 25,500 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list, or
- o A detailed description of an independent SEP estimated to cost at least \$ 25,500 which is acknowledged to be subject to a noticed Regional Board hearing and approval.

Shea Homes L.P., understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. Shea Homes L.P., also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Shea Homes L.P., in the making and giving of this Waiver.

Shea Homes L.P.

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____